

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THIRD WAVE TECHNOLOGIES, INC.,

Plaintiff,

v.

STRATAGENE CORPORATION,

Defendant.

ORDER No. 2

04-C-0680-C

Defendant Stratagene Corporation has moved for approval of its proposed supersedeas bond in the maximum amount of \$21,000,000 and stay of the enforcement of the monetary portion of the judgment entered against defendant. In addition, it has moved for leave to file a brief in reply to plaintiff Third Wave Technologies, Inc.'s brief opposing defendant's bond as inadequate, which is granted. I have considered the reply brief in deciding the motion for approval of the bond.

Plaintiff argues that the bond defendant proposes to post is not sufficient to cover the amount of the enhanced damages award of \$15,870,000, pre-judgment interest of \$485,716, attorney fees and costs in the amount of \$4,244,636 and post-judgment interest for the time in which the appeal will be pending. Plaintiff proposes a bond of

\$21,650,895.40.

The burden is on defendant to show that the proposed bond will be sufficient to protect plaintiff if defendant should default on the judgment. Defendant argues that it has assets in excess of the posted bond that would be sufficient to pay the approximately \$651,000 award that exceeds the amount of the bond, that it has spent a number of hours and incurred costs of approximately \$85,000 in securing the bond it wishes to post and that it expended the time and money in the belief that the amount of the bond would be acceptable to plaintiff. Although it is a close question, I am prepared to accept the bond, which is short of the amount sought by only about 3% of the bond. It appears that defendant could pay that amount over and above the bond. Therefore, I will grant approval of the bond in the amount of \$21,000,000 and stay enforcement of the judgment entered on January 10, 2006.

ORDER

IT IS ORDERED that defendant Stratagene Corporation's motion for leave to file a reply brief is GRANTED; its motion for approval of its supersedeas bond and for stay of the enforcement of the monetary portion of the judgment entered on January 10,

2006, is GRANTED as well.

Entered this 21st day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge